

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 03-14549
Non-Argument Calendar

FILED

**U.S. COURT OF APPEALS
ELEVENTH CIRCUIT**

August 22, 2005

**THOMAS K. KAHN
CLERK**

D. C. Docket No. 02-00586-CR-BBM-1-11

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CARLOS DAVID HERRERA,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Georgia

(August 22, 2005)

**ON REMAND FROM THE SUPREME COURT
OF THE UNITED STATES**

Before EDMONDSON, Chief Judge, CARNES and HULL, Circuit Judges.

PER CURIAM:

This case is before the Court for consideration in the light of United States v. Booker, 125 S.Ct. 738 (2005). We affirmed previously Appellant's 120-month sentence imposed after he entered a non-negotiated plea of guilty to drug trafficking offenses. See United States v. Herrera, No. 03-14549 (11th Cir. August 16, 2004). The Supreme Court has vacated our prior decision and remanded the case to us for further consideration in the light of its decision in Booker.

Appellant raised no constitutional challenge to his sentence and asserted no error based on Apprendi v. New Jersey, 120 S.Ct. 2348 (2000), or its progeny, in his initial and reply briefs. In United States v. Dockery, 401 F.3d 1261, 1262 (11th Cir. 2005), we concluded that “our well-established rule that issues and contentions not timely raised in the briefs are deemed abandoned,” (quoting United States v. Ardley, 242 F.3d 989, 990 (11th Cir. 2001) applies to Booker error; an appellant who fails to raise a Booker/Apprendi issue in his initial brief has abandoned that error on appeal.

No Booker/Apprendi sentence challenge has been raised timely --or at all -- in this case. We reinstate our previous opinion and affirm, once again, Appellant's sentence after our reconsideration in the light of Booker, pursuant to the Supreme Court's mandate.

OPINION REINSTATED; SENTENCE AFFIRMED.